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Under Authority Conferred by 28 U.S.C. § 515

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 08-164 MHP
	)	
Plaintiff,	)	STIPULATION AND <del>PROPOSED</del>
	)	ORDER REGARDING INITIATION OF
v.	)	HOME DETENTION CONDITION OF
	)	TERM OF PROBATION
W. SCOTT HARKONEN,	)	
	)	
Defendant.	)	
	)	

The United States of America and the defendant W. Scott Harkonen, by and through their respective counsel, hereby stipulate and agree, and do jointly request, that this Court approve the lifting of the stay of Special Condition No. 2 of the defendant's term of probation. That special condition requires the defendant to complete six months of home detention. An order from this

STIPULATION AND ~~PROPOSED~~ ORDER  
CR 08-0164 MHP

1 Court approving the lifting of the stay will allow the Probation Office to implement this portion  
2 of the judgment order. The assigned Probation Officer, Maria Ross, has requested that the  
3 parties obtain an order from the Court approving of the lifting of the stay. In support of their  
4 stipulation and joint request, the parties state as follows:

5 1. On September 29, 2009, the defendant W. Scott Harkonen was convicted of wire  
6 fraud at the conclusion of a jury trial. *See* CR 240.

7 2. On April 13, 2011, The Honorable Marilyn Hall Patel sentenced the defendant to  
8 a three-year term of probation and ordered him to pay a fine of \$20,000. The court also imposed  
9 several special conditions of probation, including that the defendant complete six months of  
10 home detention and that he perform 200 hours of community service. The court stayed the  
11 home-detention condition “until further notice — pending appeal in this matter.” *See* CR 382, at  
12 3.

13 3. The defendant appealed his conviction to the Ninth Circuit Court of Appeals. On  
14 March 4, 2013, a three-judge panel upheld the defendant’s wire fraud conviction in an  
15 unpublished *per curiam* opinion. *See United States v. Harkonen*, 2013 WL 782354 (9<sup>th</sup> Cir.  
16 2013).

17 4. The defendant filed a petition for rehearing en banc on March 29, 2013. The court  
18 of appeals denied that petition on May 7, 2013. The mandate was issued on May 17, 2013.

19 5. Defendant intends to petition the United States Supreme Court for a writ of  
20 certiorari, but does not object to the stay condition being lifted at this time.

21 6. Given these facts, the parties jointly request that the Court now approve the lifting  
22 of the stay of the home-detention condition. The defendant has now been on probation for more  
23 than two years. *See* 18 U.S.C. § 3564(a) (“A term of probation commences on the day that the  
24 sentence of probation is imposed, unless otherwise ordered by the court.”). According to the  
25 assigned Probation Officer, Maria Ross, the defendant has not served any of his six months of  
26 home detention. Lifting the stay of the home detention special condition at this time is  
27 appropriate.

28 7. Judge Patel retired from the court on September 30, 2012. Accordingly, the

1 parties jointly request that this matter either be handled by the duty district court judge in San  
2 Francisco, or that the case be re-assigned to a new judge.

3  
4 SO STIPULATED.

5  
6 DATED: June 12, 2013

BRIAN J. STRETCH  
Acting United States Attorney

8  
9 /s/  
KYLE F. WALDINGER  
Assistant United States Attorney

10 ALLAN GORDUS  
11 Trial Attorney

12 DATED: June 12, 2013

SIDLEY AUSTIN LLP

13  
14 By: /s/  
15 MARK E. HADDAD  
16 DOUGLAS A. AXEL  
17 Attorneys for Defendant  
18 W. SCOTT HARKONEN

19 **~~PROPOSED~~ ORDER**

20 For the reasons stated in the parties' stipulation, the Court hereby orders that the stay of  
21 Special Condition No. 2 of the defendant W. Scott Harkonen's term of probation is hereby  
22 LIFTED. The Probation Office is ordered to implement that portion of the judgment order by no  
23 later than July 1, 2013.

24 IT IS SO ORDERED.

25  
26 DATED: 6/26/13

27   
UNITED STATES DISTRICT JUDGE